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RR RUEHBZ RUEH DU RUEHJO RUEHMR RUEHRN
DE RUEHLS #0510/01 1170913
ZNR UUUUU ZZH
R 270913Z APR 07
FM AMEMBASSY LUSAKA
TO RUEHC/SECSTATE WASHDC 4324
INFO RUCNSAD/SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

UNCLAS SECTION 01 OF 03 LUSAKA 000510

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E.O. 12958: N/A
TAGS: [PREL](#) [PGOV](#) [PHUM](#) [ZA](#)
SUBJECT: OASIS FORUM REIGNITES CONSTITUTIONAL REFORM DEBATE

REF: A. LUSAKA 06 120

[1](#)B. LUSAKA 05 1537

[1](#)1. (SBU) Summary: Zambia's civil-society umbrella group, the Oasis Forum, recently declared a "constitutional struggle" and introduced a 10-step, 71-week, "roadmap" to a new constitution for Zambia. In a letter that was published in the media, President Mwanawasa provided a legal explanation of why the Oasis Forum plan is unconstitutional and said that the GRZ would implement its own roadmap to constitutional reform. Oasis Forum leaders believe that the President's legal arguments are without merit and that the GRZ plan, which will take approximately five years to complete, is unnecessarily expensive and complicated. The Oasis Forum is planning a campaign of public protests and inside political "arm twisting" to force the GRZ and ruling Movement for Multi-party Democracy (MMD) politicians to engage on the constitutional reform issue in good faith. End Summary.

Oasis Forum Reignites Constitutional Debate

[1](#)2. (SBU) The Oasis Forum recently reinvigorated the issue of constitutional reform in Zambia when it declared a "constitutional struggle" and introduced a ten-step "roadmap" that will lead to the adoption of a new constitution. The Oasis Forum, which is comprised of five leading church groups and civil society organizations, estimated that it would take 71 weeks to complete the steps in the roadmap, at a cost of approximately 25 billion kwacha (USD six million). If begun in July, the Oasis Forum plan could give Zambia a new constitution by the end of 2008.

[1](#)3. (SBU) The Oasis Forum plan calls for Parliament to begin the constitutional reform process by enacting a bill to establish a Constituent Assembly. Local councilors would then be nominated to serve as delegates to the Constituent Assembly and would draft a new constitution, using the December 2005 Constitution Review Commission's (CRC) recommendations as a starting point (Ref A). After the Constituent Assembly drafts and approves a new constitution, the President will call for a national referendum to allow voters to consider and approve the document. Assuming that voters approve, the National Assembly will then formally enact the new constitution, which will be assented to by the President.

President: Constitutional Reform Must Be Constitutional

[1](#)4. (SBU) In a letter published as a paid advertisement in the state-controlled media as well as the independent Post newspaper, President Mwanawasa said that the GRZ would move forward with constitutional reform but would not follow the Oasis Forum plan, which violates Zambia's existing constitution. The President based his position on constitutional arguments that the government put forward more

than a year ago (Ref A). Specifically, the President argued that because Article 62 provides that legislative authority is vested exclusively in Parliament, it would be unconstitutional to delegate the legislative function to a Constituent Assembly.

¶5. (SBU) Furthermore, the President continued, any constituent assembly bill would have to comply with the provisions of Article 79. Article 79 requires a national referendum to approve "any bill for the alteration of Part III of this Constitution or of this Article..." Because the Constituent Assembly would presumably alter Part III of the existing constitution, which relates to the protection of the fundamental rights and freedoms of the individual, Article 79 applies. "If your intention implicitly is to introduce a Constituent Assembly with legally binding effect, as suggested by the Mung'omba Constitution Review Commission then Articles 62 and 79 must be complied with" the President wrote. He concluded that "a possible meeting between us (to discuss the constitutional issue) would serve no useful purpose."

GRZ "Roadmap" to New Constitution

¶6. (SBU) To address the constitutional concerns raised by the President - legitimate or not - the GRZ introduced its own "roadmap" to a new constitution in December 2006. The government's roadmap is considerably more complex than the Oasis Forum's, providing for a 14-step process to adopt a new constitution that would take approximately 300 weeks to complete. In addition to being much more time-consuming than the Oasis Forum plan, the government's roadmap would also be much more expensive.

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¶7. (SBU) Among other costly and time-consuming steps, the GRZ plan calls for a census to determine the number of voters eligible to vote in a national referendum to amend Article 179. Following the referendum to amend Article 79, the plan suggests that a second referendum may be necessary to adopt the final constitution recommended by the Constituent Assembly. The roadmap also requires national elections to determine delegates who will represent Zambia's 150 constituencies in the Constituent Assembly. Although post has not seen a budget for the GRZ roadmap, the cost of conducting a census, a national referendum (or two), and a national election, in addition to the costs of convening delegates for six months (the government's timeframe), would be daunting, if not insurmountable.

Oasis Forum Cynical

¶8. (SBU) Oasis Forum leaders believe that the GRZ does not want a new constitution and is looking for legal and financial hurdles that would make it difficult, if not impossible, to achieve reform prior to the 2011 national elections. In making the case that the President is less than sincere, Catholic Center for Justice Development and Peace (CCJDP) Director Samuel Mulafulafu, noted to Poloff that government has been promising movement on a new constitution for several years. The Constitution Review Commission began taking comments on new constitution in 2003 and published an 800-plus page report at the end of 2005. Since that time the GRZ has only stalled, said Mulafulafu. "They do not want a new constitution, for whatever reason," he concluded.

¶9. (SBU) The Oasis Forum responded to the President's legal and constitutional arguments in an April 24 letter that was released to the public. Accusing the President of having "hijacked the constitution-making process," the letter argued that Parliament has the authority to enact a constituent assembly bill and should do so immediately. Article 79

applies to alterations or amendments of the existing constitution; it does not apply to the process of drafting and adopting an entirely new constitution. In essence, because the existing constitution "cannot dictate its own demise and replacement," Article 79 cannot require a referendum to empower a Constituent Assembly. The Oasis Forum also dismissed the President's position that a census would be required to determine the number of voters eligible to vote in a referendum, noting that results from the 2000 census are valid until 2010. Concluding that the constitutional issue must be decided by the people, the letter rejected suggestions that the Oasis Forum seek a High Court opinion regarding the President's arguments.

Pressure Campaign Planned

¶10. (SBU) The Oasis Forum is planning a campaign of public protests and inside "political arm twisting" when Parliament reconvenes in June, Mulafulafu said. The goal of the campaign will be to pressure the government into introducing a constituent assembly bill in Parliament. Opposition Members of Parliament (MPs), as well as a few members of the ruling MMD, have already voiced support for a constituent assembly bill, Mulafulafu said, but the GRZ must introduce the bill if it is to have a chance of passing. Mulafulafu recalled that an opposition MP introduced a constituent assembly bill in Parliament in November 2005 but the bill did not get far (Ref B).

¶11. (SBU) The government must also introduce the constituent assembly bill soon. The last push to reform the constitution in late 2005 failed partly because the issue was lost in the 2006 presidential and parliamentary campaign (Ref B). The Oasis Form believes that it must act soon so that a new constitution can be in place before candidates begin to campaign for the 2011 presidential and parliamentary elections. Once the campaign season gets underway, it will be much more difficult to draft and adopt a new constitution, Mulafulafu said.

Comment

¶12. (SBU) The Oasis Forum is best known for its role in organizing wide-spread but peaceful protests that ultimately forced former President Chiluba to abandon a bid for a third term in 2001. It may be more difficult to mount a similarly effective campaign in support of constitutional reform, however. Previous attempts by the Oasis Forum to pressure the GRZ to act have not gone far, perhaps because the issue of the constitution does not stir the public in the way the third term issue did. The President is under no legal

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obligation to establish a Constituent Assembly and is unlikely to do so absent significant public and political pressure. Whether the Oasis Forum is up to the task will be more apparent when Parliament reconvenes in June.
MARTINEZ